

SUBCHAPTER A : GENERAL PROVISION

§291.1. Purpose and Scope of this Chapter.

This chapter is intended to establish a comprehensive regulatory system under Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct, and determination of all water and sewer rate causes and proceedings before the Texas Water Commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

§291.2. Severability Clause.

The adoption of this chapter will in no way preclude the commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a retail public utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. The commission may make exceptions to this chapter for good cause.

§291.3. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Affected County - A county:

(A) that has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; and,

(B) any part of which is within 50 miles of an international border.

Affected person - Any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

Affiliated interest or affiliate -

(A) any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

Agency - Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions for higher education) which makes rules or determines contested cases.

Allocations - For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

Base rate - The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, excluding stand-by fees, which does not vary due to changes in utility service consumption patterns.

Billing period - The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

Class of service or customer class - A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.

Code - The Texas Water Code.

Commission - The Texas Natural Resource Conservation Commission.

Corporation - Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

Customer - Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

Customer service line or pipe - The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

Executive director - The executive director of the commission, or any authorized individual designated to act for the executive director.

Facilities - All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

Incident of tenancy - water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

License - The whole or part of any commission permit, certificate, registration or similar form of permission required by law.

Licensing - The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the Texas Water Commission pursuant to its authority under the Texas Water Code.

Main - A pipe operated by a utility service provider which is used for transmission or distribution of water or to collect or transport sewage.

Mandatory Water Use Reduction - The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures which seek to reduce the loss or waste of water, improve the

efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

Member - A person who holds a membership in a water supply or sewer service corporation and who either receives water or sewer utility service from the corporation or is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

Membership fee - A fee assessed each water supply or sewer service corporation service applicant which entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed pursuant to said bylaws. For purposes of Texas Water Code §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees or contributions in aid of construction.

Municipality - A city, existing, created, or organized under the general, home rule, or special laws of this state.

Municipally-owned utility - Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

Permanent installation - Any installation that is constructed or placed on and permanently affixed to a foundation, and which is, or will be, used or occupied on a permanent full-time basis. A manufactured home or prefabricated structure shall qualify as a permanent installation only if it is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and if it is connected to a permanent water and sewer system.

Person - Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

Physician - Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

Point of use or point of ultimate use - The primary location where water is used or sewage is generated; for example a residence or commercial or industrial facility.

Potable water - Water that is used for or intended to be used for human consumption or household use.

Premises - A tract of land or real estate including buildings and other appurtenances thereon.

Public utility - The definition of public utility is that definition given to water and sewer utility in this subchapter.

Purchased sewage treatment - Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

Purchased water - Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

Rate - Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in the Texas Water Code §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

Ratepayer - Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

Reconnect fee - A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in 291.87 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

Retail public utility - Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

Retail water or sewer utility service - Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

Service - Any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by retail public utilities or water or sewer service suppliers in the performance of their duties under the Texas Water Code to their customers, employees, other utilities, and the public, as well as the interchange of facilities between two or more of the utilities or water or sewer service suppliers.

Service line or pipe - A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

Sewage - Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

Standby fee - A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

Tap fee - A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees or contributions in aid of construction (CIAC) are not to be included in a tap fee.

Tariff - The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

Temporary Water Rate Provision - A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

Test year - The most recent 12 month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.

Utility - The definition of utility is that definition given to water and sewer utility in this subchapter.

Water and sewer utility - Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

Water rationing - Restrictions implemented to reduce the amount of water which may be consumed by customers of the system due to emergency conditions or drought.

Water supply or sewer service corporation - Any nonprofit, member-owned, member-controlled corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Texas Civil Statutes, Article 1434a) that provides potable water or sewer service for compensation. The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter and Texas Water Code, Chapter 13, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions:

(A) all members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested;

(B) each member is entitled to only one vote regardless of the number of memberships owned by that member;

(C) a majority of the directors and officers of the corporation must be members of the corporation; and

(D) the corporation's by-laws include language indicating the factors specified in subparagraphs (A) - (C) are in effect.

Wholesale water or sewer service - Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

Adopted August 21, 1996

Effective September 20, 1996

§291.4. Cooperative Corporation Rebates.

Nothing in this chapter prevents a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

§291.5. Submission of Documents.

All documents to be considered by the executive director under this chapter shall be submitted to the Utility Rates and Services Section, Water Utilities Division, Mail Code 153, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. Unless otherwise provided in this chapter, an original and four copies shall be submitted.

Adopted December 6, 1995

Effective January 10, 1996

§291.6. Signatories to Applications.

(a) All applications shall be signed by a corporate officer, partner, proprietor, their attorney-at-law, or the principal executive officer or ranking elected official of a governmental entity, or other person having representative capacity to transact business on behalf of the retail public utility. If the signer is not a corporate officer, partner, proprietor, their attorney-at-law, or principal executive officer or ranking elected official of a governmental entity, the application must contain written proof that such signature is duly authorized.

(b) Applications shall contain a certification stating that the person signing has personally examined and is familiar with the information submitted in the application and that the information is true, accurate, and complete.

Adopted December 6, 1995

Effective January 10, 1996

§291.7. Filing Fees.

Each application, petition, or complaint which is intended to institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by the Texas Water Code, §5.235 and §13.4521, and costs of mailing notice, if any.

(1) A rate change application filed with the commission under the Texas Water Code, §13.187, must be accompanied by the appropriate filing fee as follows:

- (A) fewer than 100 connections-\$50;
- (B) 100-200 connections-\$100;
- (C) 201-500 connections-\$200; or
- (D) more than 500 connections-\$500.

(2) An application for a certificate of public convenience and necessity under Texas Water Code, §13.244 must be accompanied by an application fee of \$100.

(3) An application for sale, assignment, or lease of a certificate of convenience and necessity under the Texas Water Code, §13.251, or notice of intent to sell, acquire, lease, or rent or merge or consolidate a water or sewer system under the Texas Water Code, §13.301, must be accompanied by the appropriate fee as follows (one fee will suffice for both applications):

- (A) fewer than 100 connections-\$50;
- (B) 100-200 connections-\$100;
- (C) 201-500 connections-\$200; or
- (D) more than 500 connections-\$500.

(4) The fees required in paragraphs (1), (2) and (3) of this section are in lieu of the \$100 filing fee required by the Texas Water Code, §5.235, which should accompany all other applications and petitions. A filing fee is not required for appeals or complaints filed under the Texas Water Code, §13.043(b) or §13.187(b).

Adopted December 6, 1995

Effective January 10, 1996

§291.8. Administrative Completeness.

(a) Notice of rate/tariff change, report of sale, acquisition, lease or rental or merger or consolidation, and sale, assignment of, or lease of a certificate, and applications for certificates of convenience and necessity shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application. A notice or an application for rate/tariff change, report of sale, acquisition, lease or rental or merger or consolidation, and applications for certificates of convenience and necessity shall not be deemed to have been filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the executive director will notify the applicant by mail of that determination. If the executive director determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.

(b) In cases involving proposed rate changes, the effective date of the proposed change must be at least 30 days after:

(1) the date that an application and notice are received by the commission, provided the application and notice are determined to be administratively complete as filed;

(2) the date the application and notice are determined to be administratively complete for previously rejected applications and notices; or

(3) the date notice is delivered to each ratepayer, whichever is later.

(c) In cases involving a proposed sale, acquisition, lease, or rental or merger or consolidation of any water or sewer system required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received by the commission and public notice is provided, unless notice is waived for good cause shown.

Adopted December 6, 1995

Effective January 10, 1996

§291.9. Agreements To Be in Writing.

No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding before the commission shall be enforced, unless it shall have been reduced to writing and signed by the parties or representatives authorized by these sections to appear for them, or unless it shall have been dictated into the record by them during the course of a

hearing, or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

§291.10. Request for Public Hearing.

(a) A request for public hearing under this chapter must be made in writing and submitted by an affected person to the commission within the time period specified by the notice. The commission may extend the time allowed for submitting a request for public hearing.

(b) The written request should contain the following information:

- (1) the name, mailing address, and phone number of the person making the request;
- (2) a brief description of the interest of the person making the request; and
- (3) a brief description of how the application, if granted, would adversely affect such interest.

(c) For purposes of this subsection, an affected person is one who is determined by the commission to have an interest different from that of the general public that may be adversely affected by action taken on the application.

(d) If the commission determines the request for public hearing is in compliance with this section, or that a public hearing would serve the public interest, the commission shall conduct a public hearing.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the petition at the time and place stated in the order. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the commission determines that no probable grounds exist for the complaint alleged in the petition, the commission shall dismiss the petition.

§291.11. Informal Proceedings.

(a) Any hearing involving a retail public water or sewer utility as defined in §291.3 of this title (relating to Definitions of Terms) may be conducted as an informal proceeding when, in the judgment of the presiding officer, the conduct of a hearing under informal procedures will:

- (1) result in savings of time or costs to all parties;
- (2) lead to a negotiated or agreed settlement of facts or issues in controversy; and

(3) not prejudice the rights of any party.

(b) If during an informal proceeding, all parties reach a negotiated or agreed settlement which in the judgment of the presiding officer settles all facts or issues in controversy, the proceeding shall not be a contested case under the Texas Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and no proposal for decision nor detailed findings of fact and conclusions of law are required.

(c) If the parties do not reach a negotiated or agreed settlement of all facts and issues in controversy, the presiding officer may adjourn the informal proceeding and reconvene it as a contested case hearing under standard hearing procedures as otherwise provided for in this chapter.

§291.12. Burden of Proof.

In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

§291.13. Record of Proceeding.

A record shall be kept of all proceedings before the regulatory authority, unless all parties waive the keeping of the record.

Adopted December 6, 1995

Effective January 10, 1996

§291.14. Emergency Orders.

(a) The commission may issue emergency orders, with or without a hearing:

(1) to compel a water or sewer service provider that has obtained or is required to obtain a certificate of public convenience and necessity to provide continuous and adequate water service, sewer service, or both, if the discontinuance of the service is imminent or has occurred because of the service provider's actions or failure to act. These orders may contain provisions requiring specific utility actions to ensure continuous and adequate utility service and compliance with regulatory guidelines;

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred;

(3) to establish reasonable compensation for the temporary service required under subsection (a)(2) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment;

(4) to appoint a temporary manager under the Texas Water Code, §13.4134; and/or

(5) to approve an emergency rate increase under the Code, §13.4133.

(b) If an order is issued under subsection (a) of this section without a hearing, the order shall fix a time, as soon after the emergency order is issued as is practicable, and place for a hearing to be held before the commission.

Adopted December 6, 1995

Effective January 10, 1996

§291.15. Jurisdiction of Municipality: Surrender of Jurisdiction.

(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(b) The City of Coffee City municipality surrendered its jurisdiction to the commission effective December 4, 1993.

Adopted December 6, 1995

Effective January 10, 1996

§291.16. Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.

The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters E and F of this chapter.